United States Court of Appeals

for the Second Circuit

APPENDIX

No. 76-4073

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

DISTRICT 1199, NATIONAL UNION OF HOSPITAL & HEALTHCARE EMPLOYEES, RWDSU, AFL-CIO,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

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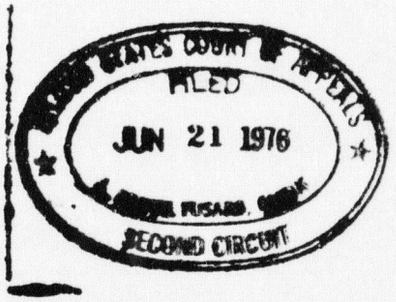
P/S



ABS DUPLICATORS, INC.—1732 Eye Street, N.W.—Washington, D.C.—298-5537

INDEX

[Undated]

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In the Matter of

DISTRICT 1199, NATIONAL UNION OF HOSPITAL & HEALTHCARE EMPLOYEES RWDSU, AFL-CIO

and

FIRST HEALTHCARE CORPORATION d/b/a PARKWAY PAVILLION HEALTHCARE

* CASE NO. 1-CG-1

* * * * * * * * * * * * * * * * * * * *

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: District 1199, National Union of Hospital & Healthcare Employees, RWDSU, AFL-CIO

Case No.: 1-CG-1

1.20.75 Charge filed

3. 6.75 Complaint and Notice of Hearing, dated

3.26.75 Respondent's Answer to the Complaint, dated

7. 7.75 Parties' stipulation of facts, dated

7.15.75 Administrative Law Judge's Notive, dated

9. 9.75 Administrative Law Judge's Decision issued

9.18.75 Charging Party's request for extension of time to file exceptions and briefs, dated

9.24.75 Respondent's objection to the Charging Party's request for extension of time to file exceptions and brief, dated

9.25.75	Board's telegram extending time to file exceptions and brief, dated
10. 2.75	Charging Party's exceptions to the Decision of the Administrative Law Judge, received
10. 3.75	General Counsel's exceptions to the Administrative Law Judge's Decision, dated
1.14.76	Board's Decision and Order, dated

FORM NLRB-508 (2-73)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
O.M.B. No. 64-R0003

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 1-CG-1

Date Filed January 20, 1975

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: District 1199 National Union of Hospital & Healthcare Employees

b. Union Representative to Contact: Jerome Brown

c. Phone No.: (203) 787-5046

d. Address (Street, city, State and ZIP code): 152 Temple Street, Rm. 619, New Haven, Conn. 06510

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(g) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about 1/4/75, the above-named labor organization has engaged in picketing and other concerted activity at the premises of the Employer without giving the required 8(g) notice to the Employer and FMCS, said Employer being a Healthcare Institution as defined in the Act, as amended.

3. Name of Employer: First Healthcare Corp. d/b/a Parkway Pavilion Healthcare

4. Phone No.: (212) 697-8200

5. Location of Plant Involved (Street, city, State and ZIP code): 1157 Enfield St., Enfield, Conn. 06082

6. Employer Representative to Contact: Robert J. Giovannetti

7. Type of Establishment (Factory, mine, wholesaler, etc.): Healthcare Institution-Nursing Home

8. Identify Principal Product or Service: Nursing care

9. No. of Workers Employed: 90

10. Full Name of Party Filing Charge: First Healthcare Corp. d/b/a Parkway Pavilion Healthcare

11. Address of Party Filing Charge (Street, city, State and ZIP code): 1157 Enfield St., Enfield, Conn. 06082

12. Telephone No.: (203) 745-1641

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Robert J. Giovannetti (Signature of representative or person making charge) — Attorney (Title or office, if any)

Address: Jackson, Lewis, Schnitzler & Krupman, 261 Madison Avenue, New York, N. Y. 10016 — (212) 697-8200 (Telephone number) — 1/17/75 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 800-727

c-12d

EXHIBIT A

COMPLAINT AND NOTICE OF HEARING

It having been charged by First Healthcare Corporation d/b/a Parkway Pavillion Healthcare, 222 South Riverside Plaza, Chicago, Illinois and 1157 Enfield Street, Enfield, Connecticut (herein called First Healthcare) that District 1199, National Union of Hospital & Healthcare Employees, RWDSU, AFL-CIO, 152 Temple Street, New Haven, Connecticut (herein called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq. (herein called the Act) the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1. The Charge in this proceeding was filed by First Healthcare on January 20, 1975 and a copy thereof served upon Respondent on January 20, 1975.

2. First Healthcare is and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of Delaware.

3.(a) At all times material herein, First Healthcare has maintained its principal office and place of business at 222 South Riverside Plaza in the City of Chicago, County of Cook, and State of Illinois, and is now and continuously has been engaged at said location in the operation of a group of healthcare facilities in various States of the United States.

3.(b) At all times material herein, First Healthcare has operated a healthcare facility d/b/a Parkway Pavillion Healthcare at 1157 Enfield Street, in the Town of Enfield, County of Hartford and State of Connecticut (herein called the Nursing Home).

3.(c) At all times material herein, First Healthcare has been engaged at said Nursing Home in the business of furnishing healthcare and related services.

4.(a) First Healthcare in the course and conduct of its business causes, and continuously has caused at all times material herein, large quantities of medicines, medical supplies and related products used by it in the operation of its healthcare facilities to be purchased and transported in inter-state commerce from and through various States of the United States other than the State of Illinois.

4.(b) First Healthcare's annual gross volume of business exceeds $100,000 and annually it

receives medial supplies, appliances and related materials valued in excess of $50,000 at the Nursing Home directly from points outside the State of Connecticut.

5. The aforesaid First Healthcare is and has been engaged in commerce within the meaning of the Act.

6. Respondent and Local 531, Service Employees International Union, AFL-CIO, 1900 Hartford Turnpike, North Haven, Connecticut (herein called Service Employees) are each labor organizations within the meaning of Section 2(5) of the Act.

7. At all times material herein, the following named persons occupied positions set opposite their respective names, and have been and are now agents of the Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act.

Ralph Gonzales. . . . . .Organizer
Merriles Millstein. . . .Organizer
Thomas Doyle. . . . . .Organizer
Kevin Doyle . . . . . .Organizer

8. At all times material herein, Service Employees has been the representative for the purpose of collective bargaining for certain service and maintenance employees of First Healthcare at its Enfield, Connecticut location.

9. On or about December 1, 1974, the collective bargaining agreement in effect between First Healthcare and Service Employees expired.

10. Commencing on or about December 22, 1974 and more particularly on January 4, 1975, Service

Employees were engaged in a strike against First Healthcare at the Nursing Home.

11. On January 4, 1975, Respondent, by its officers and agents Ralph Gonzales, Merrilee Millstein, Thomas Doyle and Kevin Doyle, joined and assisted the strike of Service Employees.

12. On January 4, 1975, Respondent, by its officers and agents Ralph Gonzales, Merrilee Millstein, Thomas Doyle and Kevin Doyle, engaged in picketing and other concerted activities against First Healthcare at the Nursing Home.

13. Respondent engaged in the activities described above in Paragraphs 11 and 12 without written notification of its intention to do so having been sent to First Healthcare and the Federal Mediation and Conciliation Service, not less than 10 days in advance.

14. By the activities described above in Paragraphs 11 and 12, carried out without the prerequisite notice described above in Paragraph 13, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(g) of the Act.

15. The activities of Respondent, described above in Paragraphs 11, 12 and 13, occurring in connection with the operations of First Healthcare described above in Paragraphs 3 and 4 have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The activities of Respondent, described above in Paragraphs 11 and 12, carried out without the prerequisite notice described above in Paragraph 13, constitute unfair labor practices affecting commerce within the meaning of Section 8(g) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 9th day of April, 1975 at 10 o'clock in the forenoon, Eastern Daylight Saving Time, at a place to be determined, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the First Region, on this 6th day of March, 1975, issues this Complaint and Notice of Hearing against District 1199, National Union of Hospital & Healthcare Employees, RWDSU, AFL-CIO, Respondent herein.

/s/ _____

Robert S. Fuchs, Regional Director
National Labor Relations Board
First Region
Boston, Massachusetts

FORM NLRB-4668
(1-73)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GPO 941798

[March 26, 1975]

* * * * *

ANSWER

District 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO ("District 1199'), respondent herein, for its answer to the complaint herein alleges:

1. Respondent admits the allegations of paragraphs 1, 2, 3(a), 3(b), 3(c), 4(a), 4(b), 5, 6, 7, 8, 9 and 10.

2. Respondent denies each and every allegation of paragraphs 14, 15, and 16.

3. Respondent denies the allegations of paragraph 11, except admits that on or about January 4, 1975 Ralph Gonzales, Merilee Millstein, Thomas Doyle and Kevin Doyle individually picketed First Healthcare Corporation for one and one-half hours.

4. Respondent denies the allegations of paragraph 12, except admits that the aforementioned individuals picketed the charging party for one and one-half hours on January 4, 1975.

5. Respondent admits that no notice was sent to the Federal Mediation and Conciliation Service but denies that it was required to do so, and further asserts that a lawful notification of a strike and picketing was given by the service employees.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

6. Respondent alleges that the notification pursuant to Section 8(g) of the National Labor Relations Act, as amended, given by service employees fulfilled the requirement of the Act.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

7. The picketing engaged in by District 1199 was de minimus and therefore, in any event, insufficient to warrant the issuance of a complaint.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

8. The requirement that picketing of the nature engaged in by the four individuals be subject to the provisions of Section 8(g) would be an invastion or abridgment of their constitutional rights, and the constitutional rights of respondent under the First Amendment of the Constitution of the United States.

SIPSER, WEINSTOCK, HARPER & DORN
Attorneys for Respondent
Office and P. O. Address
380 Madison Avenue
New York, New York 10017
(212) 867-2100

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LEILA FULLERTON, being duly sworn, deposes and says that: deponent is not a party to the action, is over 18 years of age and resides at 131 Lincoln Road, Brooklyn, N.Y.

On the 26th day of March, 1975, deponent served the within Answer upon Robert Giovannetti, Esq., Jackson, Lewis, Schnitzler & Krupman, attorneys for the Employer in this action, at 261 Madison Avenue, New York, New York 10016, the

address designated by said attorneys for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

/s/ Leila Fullerton

Sworn to before me this
26th day of March, 1975
/s/ Virginia T. Montioute

[July 7, 1975]

* * * * *

STIPULATION OF FACTS

IT IS HEREBY stipulated and agreed by District 1199, National Union of Hospital & Healthcare Employees, RWDSU, AFL-CIO (hereinafter called District 1199) and First Healthcare Corporation d/b/a Parkway Pavilion Healthcare (hereinafter called First Healthcare) and Counsel for the General Counsel that:

1. On January 20, 1975, First Healthcare filed a charge against District 1199. The charge is attached hereto as Exhibit A.

2. On March 6, 1975, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the First Region, issued a Complaint and Notice of Hearing against District 1199. The Complaint is attached hereto as Exhibit B.

3. On March 26, 1975, District 1199 served its Answer to the Complaint referred to in Paragraph 2 above. The Answer is attached hereto as Exhibit C.

4. First Healthcare, a Delaware corporation with its principal office and place of business at 222 South Riverside Plaza, Chicago, Illinois, which operates a healthcare facility d/b/a Parkway Pavilion Healthcare, at 1157 Enfield Street, Enfield, Connecticut, has an annual gross volume of business exceeding $100,000 and annually receives medical supplies, appliances and related materials valued in excess of $50,000 at its Fnfield Street location directly from points outside the State of Connecticut.

5. Local 531, Service Employees' International Union, AFL-CIO (hereinafter called Service Employees) and District 1199 are each labor organizations within the meaning of the National Labor Relations Act, as amended (hereinafter called the Act).

6. The collective bargaining agreement in effect between Service Employees and First Healthcare covering certain service and maintenance employees of First Healthcare at its Enfield, Connecticut location expired on or about December 1, 1974.

7. On or about December 9, 1974, by letter, Service Employees gave notice to First Healthcare of its intention to strike at 12:01 A.M. on December 20, 1974. Said strike actually commenced on or about December 22, 1974.

8. During said strike, and more particularly on January 4, 1975, District 1199, by its officers

and agents, Raphael Gonzeles, Merrilee Millstein, Thomas Doyle and Kevin Doyle, joined the picket line of Service Employees and picketed for one and one-half hours, said pickets displaying District 1199 hats and badges.

9. District 1199 engaged in the picketing at First Healthcare on January 4, 1975 without written notification of its intention to do so having been sent to First Healthcare and to the Federal Mediation and Conciliation Service not less than ten (10) days in advance of said picketing.

10. This Stipulation together with the Exhibits attached hereto constitutes the entire record to be submitted for the determination of the issues involved herein.

DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTHCARE EMPLOYEES, RWDSU, AFL-CIO

/s/ Harry Weinstock Atty. 6/17/75

Representative Title Date

FIRST HEALTHCARE CORPORATION d/b/a PARKWAY PAVILION HEALTHCARE

/s/ Robert J. Giovannetti 6/24/75

Representative Title Date

/s/ John T. Downs 7/7/75

John T. Downs, Counsel for the General Counsel Date
National Labor Relations Board
First Region
15 New Chardon Street
Boston, Massachusetts 02114

[July 15, 1975]

* * * * *

NOTICE

PLEASE TAKE NOTICE that the undersigned has been duly designated by the Acting Chief Administrative Law Judge as the Administrative Law Judge assigned to make a decision based on the stipulation record in this case.

Briefs are to be filed with the undersigned on or before August 15, 1975. The briefs should be addressed to the undersigned c/o The Chief Administrative Law Judge, National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

/s/ _____

Arthur Leff
Administrative Law Judge

[September 9, 1975]

* * * * *

John T. Downs, Esq., for the General Counsel.
Elmer H. Beberfall, Esq. (Sipser, Weinstock, Harper & Dorn, Esqs.), of New York City, for Respondent.

DECISION

Statement of the Case

ARTHUR LEFF, Administrative Law Judge: Upon a charge filed on January 20, 1975, by First Healthcare Corporation d/b/a Parkway Pavilion Healthcare, herein called First Healthcare, the General Counsel of the National Labor Relations

Board, by the Regional Director of Region 1, issued a complaint dated March 6, 1975, against District 1199, National Union of Hospital & Healthcare Employees, RWDSU, AFL-CIO, herein called Respondent or District 1199, alleging that Respondent had engaged in unfair labor practices within the meaning of Section 8(g) and Section 2(6) and (7) of the National Labor Relations Act, as amended, by conduct hereinafter specified. On March 26, 1975 Respondent filed an answer in which it denied that it engaged in the alleged unfair labor practices. Subsequently, the General Counsel and Respondent waived a hearing before an Administrative Law Judge; entered into a Stipulation of Facts; and agreed that the Stipulation along with the pleadings in this case, should constitute the entire record to be submitted for determination of the issues in this case. Thereafter, the undersigned was duly designated as the Administrative Law Judge to make and issue an initial decision and recommended Order in this proceeding. On August 15, 1975, the General Counsel and Respondent filed briefs with the undersigned.

Upon the stipulated record in this case, I make the following:

Findings of Fact

I. The Business of Company

First Healthcare Corporation, a Delaware corporation, with its principal office and place of business in Chicago, Illinois, operates a healthcare institution at Enfield, Connecticut, which conducts business under the name of Parkway

Pavilion Healthcare. At its Enfield facility, First Healthcare, annually, has a gross volume of business exceeding $100,000 and receives medical supplies, appliances, and related products valued in excess of $50,000 from points outside the State of Connecticut. Respondent admits that First Healthcare is engaged in commerce within the meaning of the Act. It is so found.

II. The Labor Organization Involved

Local 531, Service Employees International Union, AFL-CIO, herein called Local 531, and District 1199 are labor organizations within the meaning of the Act.

III. The Alleged Unfair Labor Practices

The issue presented in this case is whether District 1199 violated Section 8(g) in the circumstances stated below, by joining the lawfully established picket line of Local 531 at First Healthcare's Parkway Pavilion facility on January 4, 1975, and picketing for one and a half hours, without having itself first served a 10-day 8(g) notice.[1]

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[1] Section 8(g) provides in relevant part:

> "A labor organization before engaging in any strike, picketing or other concerted refusal to work at any healthcare institution shall not less than ten (10) days prior to such action notify the institution in writing and the Federal Mediation and Conciliation Service of that intention. . . . The notice shall state the date and time that such action will commence. The notice once given may be extended by the written agreement of both parties."

Local 531 represents service and maintenance employees at First Healthcare's Parkway Pavilion, a healthcare institution. Nothing in the stipulated record suggests that District 1199 has ever represented any employees at that institution, and the briefs of the parties appear to agree that it has not.

The collective-bargaining agreement between Local 531 and First Healthcare covering the latter's Parkway Pavilion facility expired on December 1, 1974. On December 9, 1974, Local 531 gave notice by letter to First Healthcare of its intention to strike at 12:01 a.m. on December 20, 1974. The strike actually began on December 22, 1974, and continued throughout the period material herein. On January 4, 1975, four individuals officially connected with District 1199, all of whom it is agreed were acting as agents of District 1199 at the time, joined Local 531's picket line and participated in the picketing for one hour and a half, displaying District 1199 hats and badges. District 1199 had theretofore given no written notification to First Healthcare or to the Mediation and Conciliation Service of its intention to join in Local 531's picketing.

It does not appear from the stipulated record that District 1199 had any labor dispute of its own with First Healthcare at the time of the picketing. Nor does it appear that District 1199 was then seeking to organize any employees at the institution being picketed. The General Counsel's brief appears to concede that District 1199's only interest in

briefly joining the Local 531 picket line on the single occasion mentioned was to express its sympathy with Local 531's lawful strike and picketing objectives.

The critical question in this case is not whether the notice requirements of Section 8(g) are applicable to sympathy picketing at a healthcare institution. The Borad has already ruled that all picketing at a healthcare institution is subject to the requirements of that section, regardless of whether the labor organization conducting the picketing is involved in a direct labor dispute with the healthcare institution being picketed.[2] Rather, the percise issue to be determined here is this: Considering the legislative purpose of Section 8(g) and the fact that Local 531 had complied with the notice requirements of that section, was District 1199 obliged in the particular circumstances of this case to give First Healthcare and FMCS a further and separate 10(g) notice of intention to picket before its agents joined the Local 531 picket line and participated in Local 531's picketing? For the reasons stated below, I hold that it was not.

The purposes of Section 8(g) are clearly set forth in Senate Report No. 93-766, dated April 2, 1974, at p. 4:

> It is in the public interest to insure the continuity of health to the Community and the care and well being

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[2] Plumbers Local 630 (Lein Steinberg), 219 NLRB No. 153.

> of patients by providing for a statutory advance notice of any strike or picketing. For this reason, the Committee approved an amendment adding a new Section 8(g) which generally prohibits a labor organization from striking or picketing a health care institution without first giving 10 days' notice. . . . . The 10-day notice is intended to give health care institutions sufficient advance notice of a strike or picketing to permit them to make arrangements for the continuity of patient care. . . .[3]

As found above, District 1199 did not inaugurate any new picketing at Parkway Pavilion Healthcare on January 4, 1975, but simply engaged, through its agents, in sympathy picketing for an hour and a half on Local 531's already existing picket line which had been established by Local 531 some 2 weeks earlier. With respect to that picket line, Local 531 had satisfied the purposes of Section 8(g), by giving First Healthcare the requisite 10 days advance notice to enable First Healthcare to make such arrangements as it might consider appropriate for the continuity

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[3] Exactly the same language is found in H. R. Report No. 93-1051, at p. 5 (May 20, 1974). To the same effect, see also the remarks of Senator Taft in Cong. Rec., July 10, 1974, at $ 12108; of Senator Cranston in Cong. Rec., May 2, 1974, at $ 6932; of Senator Williams in Cong. Rec., May 2, 1974, at $ 6934; and of Representative Ashbrook in Cong. Rec., May 30, 1974, at H. 4589.

of patient care during the strike and picketing. The brief presence of the four District 1199 pickets, along with Local 531 pickets, on the Local 531 picket line did not basically change the character of the picketing, nor broaden its objectives. Nothing in this record suggests that District 1199's one and a half hours joinder in Local 531's picketing was calculated or might be anticipated to generate any new or different economic pressures on First Healthcare of a kind not previously present in Local 531's picketing. Taking into account all of the foregoing circumstances, I believe it would be a distortion of the Congressional intent underlying Section 8(g) to hold in this case that District 1199 was required under that section to supplement the 10-day notice previously given by Local 531 by a further notice of its own before engaging in the picketing that is the subject of the complaint. In sum, I conclude and find that District 1199, the Respondent herein, did not violate Section 8(g) of the Act, by the conduct of its agents in joining the Local 531 picket line on January 4, 1975, and briefly participating in Local 531's picketing. Accordingly, I shall recommend the dismissal of the complaint in its entirety.

Conclusions of Law

1. First Healthcare Corporation d/b/a Parkway Pavilion Healthcare is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not, as alleged in the complaint, engaged in unfair labor practices within the meaning of Section 8(g) of the Act.

RECOMMENDED ORDER

It is recommended that the complaint herein be dismissed in its entirety.

/s/ _____

Arthur Leff
Administrative Law Judge

[Letterhead]

September 18, 1975

Mr. John C. Truesdale, Executive Secretary
National Labor Relations Board
1717 Pennslyvania Avenue, N.W.
Washington, D. C. 20570

Re: District 1199, National Union of Hospital and Healthcare Employees and First Healthcare Corporation d/b/a Parkway Pavilion Healthcare; Case No. 1-CG-1.

Dear Sir:

Please be advised that the Employer in the above-referenced matter intends to file exceptions to the Administrative Law Judge's Decision dated September 9, 1975.

Because the case presents a question of first impression under the healthcare amendments of 1974 and because of the potential impact of the decision on certain healthcare institutions, several associations representing healthcare institutions have

indicated an interest in filing briefs as amicus curiae in the above matter. In order to allow these organizations ample time to file amici briefs, the Employer requests that the time for filing exceptions and briefs in the above matter be extended from October 2, 1975, until November 2, 1975.

Copies of this letter have been sent this date to all interested parties.

Very truly yours,
JACKSON, LEWIS, SCHNITZLER & KRUPMAN
/s/ Robert J. Giovannetti

RJG:cst
cc: John T. Downs, Esq., NLRB, Reg. #1
Harry Weinstock, Esq.

[Letterhead]

September 24, 1975

Mr. John C. Truesdale
Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D. C. 20570

Re: District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL/CIO,
- and -
First Healthcare Corporation d/b/a Parkway Pavilion Healthcare
Case No. 1-CG-1

Dear Mr. Truesdale:

Please be advised that the Union in the above-mentioned matter strenuously objects to the request

of the counsel for the employer to extend the time for filing exceptions and briefs in the above matter from October 2, 1975 to November 2, 1975.

The recommended order of the Administrative Law Judge was dated September 9, 1975. The employer has had ample opportunity to file exceptions and briefs by the time set forth; i.e., October 2, 1975. There are no complex questions of fact and law in this case. The question involved in this proceeding has been adequately answered on a stipulated record. If, in fact, several associations representing health care institutions have expressed an interest in filing amici briefs, they too have had ample time for the filing of such briefs.

No useful purpose will be served by the extension of time requested by counsel for the employer. We therefore ask that this request be denied.

Very truly yours,
SIPSER, WEINSTOCK, HARPER & DORN
By
/s/ Elmer H. Beberfall

EHB:vs
cc: Robert J. Giovannetti, Esq.
John T. Downs, Esq.

NLRB - ORDER SECTION

9/25/75 - 11:55 am
49325

JCT/gpp

Elmer H. Beberfall, Esq.
Sipser, Weinstock, Harper & Dorn
380 Madison Avenue
New York, New York

Robert J. Giovannetti, Ewq.
Jackson, Lewis, Schnitzler & Krupman
261 Madison Avenue
New York, New York

NLRB Region 1
Boston, Massachusetts

RE: FIRST HEALTHCARE CORPORATION D/B/A PARKWAY PAVILION HEALTHCARE, 1-CG-1. POSSIBLE REQUESTS TO FILE BRIEFS AMICUS CURIAE NOT SUFFICIENT REASON TO EXTEND TIME IN WHICH THE PARTIES MUST FILE EXCEPTIONS AND BRIEFS. ACCORDINGLY, TIME FOR RECEIPT IN WASHINGTON OF EXCEPTIONS AND BRIEFS IN THE ABOVE CASE REMAINS OCTOBER 2, 1975.

JOHN C. TRUESDALE
EXECUTIVE SECRETARY

[October 1, 1975]

* * * * *

CHARGING PARTY'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the Charging Party, First Healthcare Corporation d/b/a Parkway Pavilion Healthcare, excepts to the Decision of the Administrative Law Judge in the above-captioned matter as follows:

1. The finding that the issue for determination in this matter is whether considering the legislative purpose of Section 8(g) and the fact that Local 531 had complied with the notice requirements of that section, was District 1199 obliged in the particular circumstances of this case to give First Healthcare and FMCS a further and separate 10(g) notice of intention to picket before its agents joined the Local 531 picket line and participated in Local 531's picketing? (ALJ p. 3, LL. 26-34)._/

2. The finding that District 1199 did not inaugurate any new picketing at Parkway Pavilion on January 4, 1975. (ALJ. p. 4, LL. 6-7).

3. The finding that District 1199 pickets did not basically change the character of the picketing at Parkway Pavilion nor broaden its objectives. (ALJ. p. 4, LL. 14-17).

4. The finding that District 1199's picketing was not calculated or might be anticipated to generate any new or different economic pressures on First Healthcare that was not present in Local 531's picketing. (ALJ. p. 4, LL. 17-20).

5. The finding that it would be a distortion of the Congressional intent underlying Section 8(g) to hold that District 1199 was required to give a 10-day notice before engaging in the picketing that is the subject of the Complaint. (ALJ. p. 4, LL. 21-25).

_/ Numbers prefixed "ALJ. p. (or pp.)" refer to pages in the Administrative Law Judges Decision; numbers prefixed "L. (or LL.)" refer to lines on such pages.

6. The finding that District 1199 did not violate Section 8(g) of the Act. (ALJ. p. 4, LL. 26-29).

7. The recommended order that this matter be dismissed in its entirety. (ALJ. p. 4, LL. 29-30).

8. The conclusion that District 1199 has not engaged in unfair labor practices within the meaning of Section 8(g) of the Act. (ALJ. p. 4, LL. 40-41).

Respectfully submitted,
JACKSON, LEWIS, SCHNITZLER & KRUPMAN
Attorneys for Respondent
261 Madison Avenue
New York, New York 10016

/s/ By: _____
Lewis H. Silverman

Copies of the Exceptions have this date been served upon all interested parties.

/s/ _____

[October 1, 1975]

* * * * *

EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

STATEMENT IN SUPPORT OF EXCEPTIONS

BRIEF OF COUNSEL ON BEHALF OF THE GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD

Arthur Leff, Administrative Law Judge

Respectfully submitted,

John T. Downs
Counsel for the General Counsel
National Labor Relations Board
First Region
Bulfinch Building, Seventh Floor
15 New Chardon Street
Boston, Massachusetts 02114
Telephone No. (617) 223-3326

* * * * *

PART I

EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Preliminary Statement

On September 9, 1975, Administrative Law Judge Arthur Laff issued an Administrative Law Judge's Decision in which he made a finding of fact and reached a conclusion which the General Counsel contends are contrary to and unsupported by the stipulated record.

The General Counsel respectfully urges the Board to overrule the Administrative Law Judge since the evidence contained in the stipulated record clearly supports the allegations in the Complaint. Exceptions are taken as indicated hereafter and are submitted together with a supporting argument. Additionally, a copy of the Brief of Counsel for the General Counsel to the Administrative Law Judge is submitted in further support of the position that the Administrative Law Judge should be overruled.

Exceptions

The General Counsel takes exception to:

1. The Administrative Law Judge's finding that District 1199 was not obliged in the particular circumstances of this case to give First Healthcare and Federal Mediation and Conciliation Service a separate 10(g) notice of intention to picket. (ALJD p. 3 L. 6-9)

2. The apparant finding by the Administrative Law Judge that Local 531 had satisfied the purposes of Section 8(g) for all organizations by giving First Healthcare the requisite ten days advance notice before engaging in the strike and picketing. (ALJD p. 3 L. 29-32)

3. The finding of the Administrative Law Judge that "District 1199, the Respondent herein, did not violate Section 8(g) of the Act, by the conduct of its agents in joining the Local 531 picket line on January 4, 1975." (ALJD p. 4)

4. The Administrative Law Judge's dismissal of the Complaint rather than finding the violation alleged in the Complaint and providing an adequate remedy therefor. (ALJD p. 4 L. 29-30)

PART II

STATEMENT IN SUPPORT OF EXCEPTIONS

The Administrative Law Judge relies on the fact that the brief presence of the four District 1199 pickets along with Local 531 pickets did not basically change the character of the picketing or broaden its objectives. He further goes on to state that "nothing in this record suggests that District 1199's one and one-half hours joinder in Local 531's picketing was calculated or might be anticipated to generate any new or different economic pressures on First Healthcare. . ." Based on the above, he then concludes that District 1199 was not obliged to give its own notice before picketing. The Administrative Law Judge quotes but then ignores the reason advanced by Congress.[1] For the insertion of Section 8(g) into the Act, that being to give health care institutions sufficient advance notice of a strike or picketing to permit them to make arrangements for the continuity of patient care. (Emphasis supplied)

Assuming then that patient care is the overriding concern behind Section 8(g), to conclude then that the addition of a second labor organization to

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[1]Senate Report No. 93-766, at p. 4 (April 2, 1974); H. R. Report No. 93-1051, at p. 5 (May 20, 1974).

previously existing picket line of another labor organization does not present very real and very different problems to a health care institution is to ignore reality. To name a few, (1) different labor organizations have different philosophies as to the efficacy of strikes and picketing; (2) different labor organizations have different proclivities toward violence during labor disputes; (3) it is a very real possibility that a third party might respect the picket line of Union B while not that of Union A.

It was certainly not the intent of Congress when it used the words any picketing at any health care institution (Emphasis supplied) to leave to such illusive concepts as character of the picketing or intent of the picketing union, the policing of its mandate not to picket without giving proper notice. To put the cart before the horse, as the Administrative Law Judge did, and find that since no evil grew out of the addition of Respondent to Local 531's picketing, that picketing therefore does not violate the law, would be the real distortion of congressional intent mentioned by the Administrative Law Judge in his Decision.

For all of the foregoing reasons and those advanced in the Brief of Counsel on Behalf of the General Counsel respectfully urges the Board to

reverse the Administrative Law Judge's dismissal of the Complaint and provide an adequate remedy for the violation of Section 8(g).

Respectfully submitted,

/s/ John T. Downs

John T. Downs
Counsel for the General Counsel
National Labor Relations Board
First Region
Bulfinch Building, Seventh Floor
15 New Chardon Street
Boston, Massachusetts 02114
Telephone: (617) 223-3326

[January 14, 1976]

* * * * *

DECISION AND ORDER

On September 9, 1975, Administrative Law Judge Arther Leff issued the attached Decision in this proceeding. Thereafter, both the General Counsel and the Charging Party filed exceptions and supporting briefs and the Respondent filed a reply brief.

The Board has considered the record as stipulated by the parties and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, to the extent consistent herewith.

The Administrative Law Judge found that Respondent did not violate Section 8(g)[1] by engaging in sympathy picketing without first giving 10 days' notice of its intention to do so. In our judgment, Respondent's failure to comply with the notice requirements of Section 8(g) violated the Act.

Local 531, Service Employees International Union, AFL-CIO, represents the service and maintenance employees at First Healthcare's Enfield, Connecticut, facility. Upon the expiration of its collective-bargaining agreement with First Healthcare, Local 531 gave notice on December 9, 1974, of its intention to strike at 12:01 a.m. on December 20, 1974. The strike actually began on December 22, 1974, and continued throughout the period material herein.

On January 4, 1975, four of Respondent's officers joined the picket line of Local 531 in sympathy and picketed for 1-1/2 hours. All four pickets displayed Respondent District 1199 hats and badges. Respondent never gave any notice of its intention to join the Local 531 picket line. So far as the stipulated

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[1]Sec. 8(g) provides: A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following the certification or recognition the notice required by this section shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

record shows, Respondent never has and does not now represent any employees at the Enfield, Connecticut, institution.

Accordingly, we must decide whether a labor organization violates Section 8(g) of the Act when it engages in sympathy picketing at a health care institution without first giving 10 days' notice of its intention to do so to both the institution in writing and the Federal Mediation and Conciliation Service.

The Administrative Law Judge concluded that Respondent was not required to provide the 8(g) notice. He believed that the presence of the four Respondent pickets did not basically change the character of Local 531's picketing nor broaden its objectives. In addition, he observed that there was nothing in the record to suggest that the sympathy picketing was calculated or might be anticipated to generate any new or different economic pressures on the health care institution of a kind not previously present in Local 531's picketing. He concluded that it would be a distortion of the Congressional intent underlying Section 8(g) to hold in this case that Respondent was required under that section to supplement the 10-day notice previously given by Local 531 by a further notice of its own before engaging in the sympathy picketing.

We are inclined to read Section 8(g) more literally than the Administrative Law Judge. In our opinion, the 8(g) notice requirement is clear and absolute. First, it is mandatory rather than

discretionary -- the statute provides that "a labor organization . . . shall" give written notice. Second, it applies regardless of the nature of the picketing involved -- notice must be provided in advance of "any strike, picketing or other concerted refusal to work at any health care institution. . . ." Finally, Section 8(g) is devoid of any modifying language respecting the character of the picketing, its objectives, or the type of economic pressures generated. In the face of this language, Respondent cannot rely upon the earlier notice given by another labor organization as a basis for fulfilling its own statutory obligations.

This interpretation of Section 8(g) is mandated by both its legislative history and the policy considerations which prompted its enactment. As stated by Senator Taft during Senate debate:

> This subsection applies not only to bargaining strikes or pickets, but also, as stated in the statute, to 'any picket or strike.' As examples, this subsection would apply to recognition strikes, area standard strikes, secondary strikes, jurisdictional strikes, and the like.

Any doubt that the phrase "and the like" was intended to encompass sympathy picketing is removed by Senator Javits' observation that "[Ten] days' notice of any

strike or picketing, including stranger picketing,[2] must be given to a health care institution."

The purpose behind the 10-day notice provision is to provide health care institutions with sufficient time to make arrangements for continuing patient care during the labor dispute. Patient needs, staffing requirements, and supplies must all be examined. It is crucial, therefore, to analyze such factors as the ability to receive supplies during the strike, the ability of strike replacements to cross the picket line, and the willingness of nonstriking personnel to work behind the picket line. In some instances, it may even be necessary to remove the patients to another facility in order to insure proper care.

In order to assess the extent to which normal operations are likely to be disrupted, the health care institution is entitled under Section 8(g) to receive at least 10 days' notice from any labor organization which plans to begin picketing, engage in a strike, or work stoppage at a specific future time. It may very well be that suppliers, nonstriking employees, and strike replacements, who may be willing to cross one union's picket line, will refuse to do so if another labor organization begins picketing. If one union decides to join another union's picket line in sympathy and does not give the 10-day notice required by Section 8(g), health care

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[2]As noted earlier, Respondent does not represent any employees at the Enfield, Connecticut, facility.

institutions may suddenly find themselves with an unexpected disruption in services because of the picketing by two different unions instead of one.

Furthermore, the Act specifically requires that written notice also be given to the Federal Mediation and Conciliation Service where a labor organization plans to picket a health care facility. We do not deem that a 10-day notice by one labor organization to the Federal Mediation and Conciliation Service is sufficient to meet the statutory requirement for other labor organizations which may later join in the dispute.

It is our conclusion, therefore, that Congress intended that the 10-day notice provision of Section 8(g) be interpreted according to its literal meaning and, therefore, any strike, work stoppage, or picketing including sympathy picketing at the premises of a health care institution is violative of Section 8(g) unless proper notice of it has been served on the health care facility and the Federal Mediation and Conciliation Service by the labor organization involved.

Accordingly, for all of the reasons discussed above, we find that Respondent, by joining the picket line of Local 531 and picketing at the Parkway Pavilion Healthcare facility without first giving the required notice, violated Section 8(g) of the Act.

The Effects of the Unfair Labor Practice Upon Commerce

The activities of Respondent set forth above have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to industrial strife burdening and obstructing commerce.

The Remedy

Having found that Respondent has engaged, and is engaging, in unfair labor practices in violation of Section 8(g) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

On the basis of the foregoing findings of fact and on the entire record in this case, we make the following:

Conclusions of Law

1. First Healthcare Corporation, d/b/a Parkway Pavilion Healthcare, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. First Healthcare Corporation, d/b/a Parkway Pavilion Healthcare, is a healthcare institution within the meaning of Section 2(14) of the Act.

3. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

4. By picketing at the Parkway Pavilion Healthcare institution at Enfield, Connecticut, without first giving 10 days' written notice to Parkway Pavilion Healthcare and to the Federal Mediation and

Conciliation Service, Respondent has violated Section 8(g) of the Act.

5. The foregoing unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, District 1199, National Union of Hospital & Healthcare Employees, RWDSU, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from engaging in any strike, picketing, or other concerted refusal to work at the premises of Parkway Pavilion Healthcare, or any other health care institution, without notifying in writing Parkway Pavilion Healthcare or such other health care institution, and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of that intention.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act:

(a) Post at its business offices, meeting halls, and all other places where notices to its members are customarily posted copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms

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[3]In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

provided by the Regional Director for Region 1, after being duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 1 enough signed copies of the aforesaid notice for posting by First Healthcare Corporation, d/b/a Parkway Pavilion Healthcare, if it is willing, in places where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Howard Jenkins, Jr., Member

John A. Penello, Member

Peter D. Walther, Member

NATIONAL LABOR RELATIONS BOARD

CHAIRMAN MURPHY and MEMBER FANNING, dissenting:

We agree with the Administrative Law Judge, for the reasons stated by him, that given the unusual fact situation presented herein, District 1199's decision to engage in sympathy picketing without first providing 10 days' notice to First Healthcare and the Federal Mediation and Conciliation Service violated neither the letter nor the spirit of Section 8(g). All that we are faced with here is four agents of District 1199 joining a lawfully established picket line in sympathy for a period of 1-1/2 hours.

As the Administrative Law Judge observed, the brief presence of the four District 1199 pickets did not basically change the character of the picketing, did not broaden its objectives, and did not generate any new or different economic pressures on First Healthcare. It is thus a distortion of the Congressional intent underlying Section 8(g) to require District 1199 to supplement the 10-day notice previously given by Local 531 with a further notice of its own before briefly joining Local 531 in sympathy.

Betty Southard Murphy, Chairman

John H. Fanning, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT engage in any strike, picketing, or other concerted refusal to work at the premises of Parkway Pavilion Healthcare, of any other health care institution, without notifying, in writing, Parkway Pavilion Healthcare or such other healthcare institution, and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of that intention.

DISTRICT 1199, NATIONAL UNION OF HOSPITAL & HEALTHCARE EMPLOYEES, RWDSU, AFL-CIO

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Seventh Floor, Bulfinch Building, 15 New Chardon Street, Boston, Massachusetts 02114, Telephone (617) 223-3348.

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

DISTRICT 1199, NATIONAL UNION OF HOSPITAL & HEALTHCARE EMPLOYEES, RWDSU, AFL-CIO,
Respondent.

No. 76-4073

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) 3 copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 10 day of May 1976.

Sipser, Weinstock, Harper,
& Dorn, Esqs.
Att: Elmer H. Beberfall, Esq.
380 Madison Avenue
New York, New York 10017

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

ABS DUPLICATORS, INC.

Alphonse Smith

1732 Eye Street, N.W.
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Telephone: 298-5537